

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

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| In the matter of the proposed adoption of |) | NOTICE OF PUBLIC HEARING |
| NEW RULE I Access to Instructional |) | ON PROPOSED ADOPTION, |
| Materials, NEW RULE II Procedural |) | AMENDMENT, AND REPEAL |
| Safeguards, NEW RULE III Special Education |) | |
| Data Collection and Reporting, NEW RULE IV |) | |
| Resolution Process, NEW RULE V Expedited |) | |
| Due Process Hearing Resolution Process, |) | |
| NEW RULE VI Response to Scientific, |) | |
| Research Based Intervention in Learning |) | |
| Disability Identification, NEW RULE VII |) | |
| Severe Discrepancy in Learning Disability |) | |
| Identification, NEW RULE VIII Documentation |) | |
| Requirements in Learning Disability |) | |
| Identification, and NEW RULE IX Extended |) | |
| School Year Services, the amendment of |) | |
| ARM 10.16.3007, 10.16.3008, 10.16.3018, |) | |
| 10.16.3019, 10.16.3121, 10.16.3122, |) | |
| 10.16.3125, 10.16.3132, 10.16.3135, |) | |
| 10.16.3136, 10.16.3141, 10.16.3142, |) | |
| 10.16.3150, 10.16.3180, 10.16.3181, |) | |
| 10.16.3194, 10.16.3220, 10.16.3320, |) | |
| 10.16.3321, 10.16.3340, 10.16.3341, |) | |
| 10.16.3502, 10.16.3504, 10.16.3505, |) | |
| 10.16.3506, 10.16.3508, 10.16.3510, |) | |
| 10.16.3515, 10.16.3523, 10.16.3528, |) | |
| 10.16.3531, 10.16.3560, 10.16.3571, |) | |
| 10.16.3660, 10.16.3661, 10.16.3662, |) | |
| 10.16.3803, and 10.16.3810, and repeal of |) | |
| ARM 10.16.3129, 10.16.3145, 10.16.3146, |) | |
| 10.16.3196, 10.16.3322, 10.16.3342, |) | |
| 10.16.3516, 10.16.3751, and 10.16.3752 |) | |
| relating to special education |) | |

TO: All Concerned Persons

1. On April 16, 2007 at 9:00 a.m. a public hearing will be held in the conference room of the Office of Public Instruction building at 1201 11th Avenue, Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules.

2. The State Superintendent will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Superintendent's office no later than 5:00 p.m. on April 2, 2007 to

advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893, e-mail: opirules@mt.gov.

3. Statement of Reasonable Necessity: The State Superintendent has determined that it is reasonable and necessary to adopt, amend, and repeal the following rules so that Montana's rules are in compliance with the Individuals with Disabilities Education Act as amended and reauthorized in 2005 and for clarification and consistency with other rules under chapter 16.

4. The proposed new rules provide as follows:

NEW RULE I ACCESS TO INSTRUCTIONAL MATERIALS (1) The Superintendent of Public Instruction shall adopt the National Instructional Materials Accessibility Standard (NIMAS).

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

NEW RULE II PROCEDURAL SAFEGUARDS (1) Each local educational agency shall implement procedural safeguards consistent with the requirements of 34 CFR 300.500 through 300.536.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

NEW RULE III SPECIAL EDUCATION DATA COLLECTION AND REPORTING (1) The Superintendent of Public Instruction shall annually:

(a) collect and report valid and reliable data consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR 300.601 through 300.602 and 34 CFR 300.640 through 300.646;

(b) publicly report data as required under the IDEA in a manner that does not result in disclosure of data identifiable to individual children and consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA); and

(c) conduct validation checks and an analysis of data submitted by the local educational agencies to ensure validity as well as to determine if local educational agencies met performance targets established in the State Performance Plan.

(2) The local educational agency shall annually:

(a) electronically report required data to the Superintendent of Public Instruction using electronic data collection and management systems in accordance with established instructions and timelines;

(b) ensure data collected and reported is valid and accurate; and

(c) review performance data relative to state performance targets in the State Performance Plan for purposes of identifying areas in need of improvement.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

NEW RULE IV RESOLUTION PROCESS (1) Within 15 days of receipt of notice of the parents' due process request, the local educational agency must convene a resolution meeting in accordance with 34 CFR 300.510.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

NEW RULE V EXPEDITED DUE PROCESS HEARING RESOLUTION PROCESS (1) Upon receipt of a request for expedited due process hearing, the local educational agency must convene a resolution meeting in accordance with 34 CFR 300.532(c)(2) and (3).

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

NEW RULE VI RESPONSE TO SCIENTIFIC, RESEARCH BASED INTERVENTION IN LEARNING DISABILITY IDENTIFICATION (1) A student may be determined to have a specific learning disability based on an insufficient response to scientific, research based interventions resulting in a low level of academic achievement. Insufficient response to interventions occurs when, despite the implementation of the interventions over a reasonable period of time, the student's academic achievement continues to progress at a rate that is significantly below the learning rate of students of a similar age level.

(a) Scientific, research based interventions are:

(i) matched to the specific needs of the student as identified through systematic, data-based processes for examining the presenting problem, including parental input, to identify instructional interventions that have a high likelihood of success;

(ii) focused on changing the instructional strategies or techniques used with the student; and

(iii) regularly monitored for student progress and correct implementation via regular and frequent data collection, and analysis and modification of interventions as necessary based on data analysis.

(b) In determining the response to scientific, research based interventions, the team must consider data regarding how appropriately the intervention was delivered by qualified personnel, as well as, data comparing the student's rate of learning and current levels of performance with the student's initial levels of performance.

(2) A student may be determined to have a specific learning disability if the student is making sufficient response to scientific, research based interventions provided:

(a) the student has been provided scientific, research based interventions in (1); and

(b) the level of intervention necessary to sustain the response can only be

provided through special education services.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

NEW RULE VII SEVERE DISCREPANCY IN LEARNING DISABILITY

IDENTIFICATION (1) A student may be determined to have a specific learning disability based on a severe discrepancy between the student's intellectual ability and achievement in one or more of the areas listed in ARM 10.16.3019.

(a) A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in ARM 10.16.3019 when adjusted for regression to the population mean.

(b) Error in test measurement requires judgment for students who score near two standard deviations below the population mean. When exercising this judgment, consideration of additional information, such as classroom performance relative to the student's performance on norm referenced tests, shall be used as the basis for determining the severe discrepancy.

(c) Alternatives to norm referenced tests, such as curriculum-based assessments, shall be utilized to determine severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar in size to the discrepancy that would have otherwise been found in (1)(a).

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

NEW RULE VIII DOCUMENTATION REQUIREMENTS IN LEARNING

DISABILITY IDENTIFICATION (1) Evaluation teams shall document evaluation team findings under [NEW RULE VI] or [NEW RULE VII] and:

(a) the student's academic performance in the regular classroom setting through observation.

(i) Requirements for documentation of observation may be met by observation of routine classroom instruction and monitoring of the student's performance that was done before the child was referred for an evaluation or have at least one member of the group described in 34 CFR 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with 34 CFR 300.300(a), is obtained.

(ii) In the case of a student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age.

(b) educationally relevant medical findings, if any, that have been considered; and

(c) two or more interventions specific to the individual student. Interventions

shall not unnecessarily delay appropriate identification.

(2) If the student has been evaluated under [NEW RULE VI], documentation must also include:

(a) the scientific, research based interventions and instructional strategies used; and

(b) the student centered data collected during the implementation of at least two intensive individualized interventions which have been implemented for a sustained period of time.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

NEW RULE IX EXTENDED SCHOOL YEAR SERVICES (1) Local educational agencies shall provide extended school year services in accordance with 34 CFR 300.106.

(2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

5. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.16.3007 ELIGIBLE STUDENTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (1) To be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), a student must meet the criteria for one or more of the ~~disabling conditions~~ disability categories listed in ARM 10.16.3010 through 10.16.3022 ~~34 CFR 300.7(a)(1) and as a result of that condition the student is in need of special education as defined in 34 CFR 300.26.~~

(2) ~~"In need of special education" means the student must need specially designed instruction delivered or directed by a qualified special educator, either alone or in collaboration with other qualified personnel.~~ The disability must adversely affect the student's educational performance such that the student needs special education as defined in 34 CFR 300.39.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE (1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral or developmental assessments, classroom based assessment, observations, progress monitoring, ~~analysis of classroom assignments,~~ or criterion-referenced tests, etc.) indicate a pattern of educational, developmental, or functional attainment that can wholly or in part be attributed to the

disabling condition.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairment if:

(a) the student has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, or ~~tuberculosis~~ Tourette syndrome; and

(b) the condition adversely affects the student's educational performance.

(2) A medical diagnosis of a chronic or acute health problem is required.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels or grade-level standards:

(a) ~~The student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels~~ does not make sufficient progress to meet age or state grade-level standards in one or more of the following areas listed in (1)(b); and

(b) ~~The student has a severe discrepancy between the student's intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics reasoning.~~

(b) (i) Consistent with district policy, evaluation teams shall use either response to scientific, research based intervention under [NEW RULE VI] or severe discrepancy under [NEW RULE VII] when determining whether the student is not making sufficient progress toward age or state grade-level standards.

(c) The student may not be identified as having a specific learning disability if the student's significantly low rate of progress in meeting age or state grade-level standards is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; cultural difference; or a lack of appropriate instruction. A severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in (1)(b) when adjusted for regression to the mean. Error in test measurement requires judgment for students who score near two standard deviations below the population

~~mean. When exercising this judgment, consideration of additional information, such as classroom performance relative to the student's performance on norm-referenced tests, shall be used as the basis for determining the severe discrepancy.~~

~~(ii) Alternatives to norm-referenced tests, such as curriculum-based assessments, shall be utilized to determine severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar in size to the discrepancy that would have otherwise been found in (1)(b)(i).~~

~~(2) At least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting.~~

~~(a) In the case of a student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age.~~

~~(3) Documentation of the learning disability determination shall:~~

~~(a) Meet the requirements for a written report found in 34 CFR 300.543;~~

~~(b) If appropriate, state the basis for concluding that the use of standardized test instruments would not be valid whenever provisions of (1)(b)(ii) are utilized to determine a severe discrepancy;~~

~~(c) Include educationally relevant medical findings, if any, that have been considered; and~~

~~(d) Include a report of one or more intervention techniques specific to the individual student. Interventions shall not unnecessarily delay appropriate identification.~~

~~(4) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; or cultural difference.~~

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

10.16.3121 OFFICE SUPERINTENDENT OF PUBLIC INSTRUCTION'S RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

(1) The Office Superintendent of Public Instruction shall ensure that all students with disabilities, ages 3 through 18 inclusive, including students with disabilities who have been suspended or expelled from school, are provided a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through 1485) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA)₁ and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

(2) The Office Superintendent of Public Instruction shall ensure that when local educational agencies provide education to students ages 19, 20₁ or 21,

students of the same age with disabilities are provided FAPE in accordance with IDEA.

(3) The Office Superintendent of Public Instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA.

(4) If a local educational agency fails to provide FAPE for a student with disabilities in accordance with IDEA, the Office Superintendent of Public Instruction shall take immediate steps to ensure FAPE is made available to the student with disabilities.

(a) The Office Superintendent of Public Instruction may initiate one or more of the following options to ensure that FAPE is made available for the student with disabilities:

(i) through (vi) remain the same.

(b) Any costs incurred by the Office Superintendent of Public Instruction to provide FAPE to a student with disabilities due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the Office Superintendent of Public Instruction and hearing before the Board of Public Education.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C., sections 1401 through ~~1485~~ 1419) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16). If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) For the purposes of this rule, "resides" means where the child lives during the school week.

(3) When the local educational agency provides education to students ages 19, 20, or 21, students of the same age with disabilities will be provided a free appropriate public education in accordance with IDEA.

~~(3) (4) Students~~ The local educational agency shall implement procedures for students with disabilities unilaterally placed in private elementary and secondary schools by their parents when a free appropriate public education is not an issue will be provided services as required by 34 CFR 300.450 through 300.462 as defined by

20-5-102, MCA, and consistent with the requirements of 34 CFR 130 through 148 and state administrative rules.

~~(a) The local educational agency in which the private school is located shall be responsible for child find activities, through referral, for students attending the private school.~~

~~(b) The local educational agency in which the private school is located shall refer each student identified under (3)(a) to the local educational agency in which the student resides.~~

~~(c) The local educational agency in which the student resides shall follow the procedures established in ARM 10.16.3320(1)(c) or (2) for each referred private school student.~~

~~(d) If the student is qualified for special education services, the local educational agency in which the student resides shall consult with the private school officials and develop a service agreement in accordance with 34 CFR 300.454 through 300.456.~~

~~(e) Each private school student with disabilities who has been designated to receive services under 34 CFR 300.452 must have a services plan that describes the specific special education and related services that the local educational agency in which the student resides will provide to the student in light of the services that the local educational agency has determined, through the process described in 34 CFR 300.453 through 300.454, it will make available to private school students with disabilities.~~

(5) The local educational agency may not require parents to obtain a prescription for a student as a condition to attending school, receiving an evaluation, or receiving services in an individualized education program in accordance with 34 CFR 300.174.

(6) The local educational agency must conduct routine checking of hearing aides in accordance with the requirements of 34 CFR 300.113.

(7) The local educational agency must take all reasonable steps to provide instructional materials in accessible formats to students with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(8) Local educational agencies must take measurable steps to recruit, hire, train, and retain qualified personnel to provide special education and related services to students with disabilities.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND

RESPONSIBILITIES (1) Each local educational agency shall establish procedures consistent with the requirements under the Individuals with Disabilities Education Act and state administrative rules to ensure that all students with disabilities living within the boundaries of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which students are currently receiving needed special education and related services. ~~If the student is parentally enrolled in a private school outside the~~

~~boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities through referral.~~

(a) The procedures shall include a method to screen and develop criteria for further assessment for children between the ages of birth to 21 including all children in public and private agencies, operated within the local educational agency legal boundaries and children who are highly mobile, migrant, homeless, or wards of the state.

~~(b) The written procedures shall describe the methods for collecting, maintaining, and reporting current and accurate data on all student identification activities. At a minimum, the procedures must:~~

~~(i) name the title of the person responsible for the coordination, implementation, and documentation of the child find procedures;~~

~~(ii) describe student identification activities including audiological, health, speech/language, and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, or waiver of learner outcomes (accreditation standards), regular education intervention procedures, and results of progress monitoring;~~

~~(iii) describe the role and responsibilities, if any, of other public or private agencies; and~~

~~(iv) identify the policy of the local education agency for identification of a student as having a specific learning disability. If a local educational agency adopts a policy to use a response to scientific, research based intervention in learning disability identification, it must identify the grades and school buildings for which such a policy applies; and~~

~~(iv) (v) ensure the collection and use of data are in accordance with the confidentiality requirements of 34 CFR 300.560 611 through 300.577 627.~~

(2) ~~Before any major identification, location, or evaluation activity, the~~ The local educational agency must provide parents with ~~written~~ public notice of the ~~policies and its child find procedures and the~~ procedures it implements to ensure protection of the confidentiality of any personally identifiable information collected, used, or maintained under Part B of IDEA. ~~The notice~~ Confidentiality must comply with the requirements of 34 CFR 300.564 610 through 300.627 ~~and be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the local educational agency boundaries of the activity.~~

(3) If the student is parentally enrolled in a private elementary or secondary school outside the boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities, evaluations, and provision of services in accordance with the requirements of 34 CFR 300.130 through 300.144. The public elementary school district in whose boundaries the private elementary school is located shall implement the required services in accordance with 34 CFR 300.130 through 300.144 for elementary students. The public high school district in whose boundaries the private secondary school lies, shall implement required services in accordance with 34 CFR 300.130 through 300.144 for high school students.

(4) Local educational agencies shall coordinate child find activities for children ages birth through two with early intervention provider agencies.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3132 INTERAGENCY COORDINATION FOR PART C, IDEA

(1) The Office Superintendent of Public Instruction shall develop and implement interagency agreements with the Department of Public Health and Human Services for the purpose of coordinating on transition matters between Part C and Part B of IDEA.

(2) The agreement shall include policies and procedures relating to a smooth and effective transition for those children participating in the early intervention program under Part C of IDEA who will participate in preschool programs assisted under Part B of IDEA, including:

- (a) determining financial responsibilities of agencies;
- (b) identifying responsibilities for performing evaluations;
- (c) developing and implementing educational programs;
- (d) coordinating communication between agencies;
- (e) participating in transition planning conferences; and
- (f) ensuring an individualized education program has been developed and implemented by the student's third birthday.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3135 COMPREHENSIVE SYSTEM OF PERSONNEL

DEVELOPMENT (1) The Office Superintendent of Public Instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development. The procedures shall include:-

(a) Analysis of state and local needs for professional development for personnel to serve students with disabilities that includes at a minimum:

- ~~(i) the number of personnel providing special education and related services;~~
- ~~(ii) relevant information on current and anticipated personnel vacancies and shortages including the number of individuals described in (1)(a)(i) with provisional certification; and~~

~~(iii) the extent of certification or retraining necessary to eliminate these shortages that is based, to the maximum extent possible, on existing assessments of personnel needs.~~

~~(b) An annual statewide needs assessment to be conducted before June 1 of each year to determine if:~~

- ~~(i) a sufficient number of qualified personnel are available in the state;~~
- ~~(ii) in-service and technical assistance personnel development programs are needed in specific areas related to the provision of special education and related services; and~~

~~(iii) preservice preparation of new personnel is needed.~~

(i) identification of preservice and professional development training needs to address personnel shortages and requirements for provision of qualified personnel;

(ii) review of the Annual Performance Report results in collaboration with the

state Special Education Advisory Panel to identify statewide training needs to improve outcomes for students with disabilities consistent with the State Performance Plan;

(iii) implementation of a statewide needs assessment to identify specific professional development needs of special education and related services personnel conducted at least every third year.

(b) Implementation of a regionalized structure for the implementation of professional development which helps to ensure personnel have the skills and knowledge to improve academic achievement and functional performance of students, and enables personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate instruction on the use of adaptive and instructional software.

(c) A detailed structure for personnel planning that focuses on preservice and in-service education needs and that describes procedures for:

(i) acquiring, reviewing, and disseminating to general and special education teachers, paraprofessional personnel (e.g., teacher aides and instructional assistants), administrators, and related service providers significant information about ~~promising educational practices~~ evidence based research practices proven effective through research or demonstration;

(ii) providing technical assistance to local educational agencies, educational cooperatives, state operated programs, and private programs serving state agency placed students with disabilities; and

(iii) identifying state, local, and regional resources which will assist in meeting the state's personnel preparation needs.

(2) The Superintendent of Public Instruction shall appoint a comprehensive system of personnel development council to ensure that public and private institutions of higher education and other agencies and organizations having an interest in the preparation of personnel for the education of students with disabilities have an opportunity to participate fully in the development, review, and annual updating of the state comprehensive system of personnel development. The council shall:

(a) develop a long-range personnel development plan and evaluate effectiveness of state personnel training activities in meeting the plan and make recommendations for in-service, preservice and technical assistance programs on an annual basis;

(b) establish procedures to ensure collaboration and coordination of Office of Public Instruction and local educational agency efforts in the utilization of current technology and training techniques in meeting the personnel development needs and use of appropriate networks, linkages, and databases; and

(c) ~~prepare a written~~ report on recommendations regarding personnel preparation to the Superintendent of Public Instruction and the State Special Education Advisory Panel.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF

QUALIFICATIONS (1) ~~Any teacher providing special education and related services to students with disabilities shall hold a current Montana teaching certificate with appropriate endorsements.~~

~~(a) A special education teacher must hold a current Montana teaching certificate with an endorsement in special education.~~

~~(b) A teacher of homebound or hospitalized students must hold a current Montana teaching certificate.~~

~~(c) A school psychologist must hold a current Montana Class 6 teaching certificate. Special education teachers and related service personnel must hold licenses consistent with state licensing or educator licensing requirements for the subjects they teach and the services they provide.~~

~~(d) (a) Supervisors of special education teaching personnel must have a Class 3 administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education.~~

(2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel.

(3) Each local educational agency must require that each administrator which provides or supervises the provision of special education and related services to students with disabilities; obtains specific skills which enable the administrator to deal effectively with students with disabilities. These skills may be obtained through formal training or in-service training.

(4) Each local educational agency must require that each teacher who implements education services to students with disabilities; obtains specific skills which enable the teacher to deal effectively with students with disabilities under the teacher's supervision. These skills may be obtained through formal training or in-service training or consultation.

~~(5) A professional person (i.e., occupational therapist, physical therapist, social worker, psychiatrist, nurse, audiologist, speech/language pathologist, recreational therapist, professional counselor or physician) providing special education and related services to students with disabilities under this section shall hold a license from the appropriate state authority and meet the appropriate professional requirements that are based on the highest entry level requirements in the state applicable to the profession or discipline.~~

(6) Paraprofessional personnel (e.g., teacher aide or instructional assistant) shall meet current Board of Public Education accreditation standards under ARM 10.55.715.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3141 OFFICE SUPERINTENDENT OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING (1) The Office Superintendent of Public Instruction shall provide an ongoing and systematic monitoring process consistent with the requirements of 34 CFR 300.600 through 300.602 and 300.606 through 300.608 to ensure compliance with IDEA and its implementing regulations at 34 CFR, part 300, and Montana statutes pertaining to special education at Title 20, chapter 7, part 4, MCA, and implementing administrative rules at ARM Title 10,

chapter 16. The procedures shall apply to all educational programs for students with disabilities including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency.

(a) The procedures shall include:

(i) review of local educational agency policies, procedures, ~~programs~~ services, and program performance data;

(ii) determination of the need for further information, on-site visitation, training, ~~or technical assistance, or intervention~~;

(iii) development of strategies to enable the local educational agency to improve ~~programs~~ services for students with disabilities;

(iv) ~~Office Superintendent~~ of Public Instruction review of the ~~effectiveness of the improvement plan and implementation strategies~~ performance of each local educational agency on the targets in the state's performance plan in accordance with 34 CFR 300.608 and 300.646; and

(v) procedures for identification of noncompliance and its correction including:

(A) the local educational agency's response to the findings;

(B) written documentation verifying immediate discontinuance of the violation, elimination of any continuing effects of past violations, and prevention of the occurrence of any future violations and the steps taken to address the violation; and

(C) verification of compliance by the ~~Office~~ Superintendent of Public Instruction.

(2) If a local educational agency is not meeting the requirements under Part B of IDEA, including the targets in the State Performance Plan, or fails to voluntarily take steps to correct an identified deficiency or fails to take any of the actions specified in a local educational agency corrective action plan, the ~~Office~~ Superintendent of Public Instruction shall notify the local educational agency in writing of the actions the ~~Office~~ Superintendent of Public Instruction intends to take in order to enforce compliance with IDEA and its implementing regulations, and Montana statutes pertaining to special education and implementing administrative rules.

(a) The notice shall include a statement of the actions the ~~Office~~ Superintendent of Public Instruction intends to take, right to a hearing, and consequence of the local educational agency's continued noncompliance on its accreditation status and approval for state and federal funding of special education services.

(b) The ~~Office~~ Superintendent of Public Instruction may initiate one or more of the options under ARM 10.16.3121 and implement the provisions of 34 CFR 300.608 to ensure compliance.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3142 INTERAGENCY AGREEMENTS (1) The ~~Office~~ Superintendent of Public Instruction shall develop and implement interagency agreements with the

Board of Public Education, departments of Public Health and Human Services and Corrections for the purpose of describing the role that each of these agencies plays in providing for special education or related services.

(2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement; and establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(3) The interagency agreement shall designate the rules, regulations, and educational standards applicable to educational services administered by other public agencies and the monitoring role of the ~~Office~~ Superintendent of Public Instruction.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3150 STATE ADVISORY PANEL (1) The Superintendent of Public Instruction shall establish and maintain the state advisory panel in accordance with 34 CFR 300.650 167 through 300.653 169.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3180 NOTICE OF AVAILABILITY OF FEDERAL FUNDS (1) The ~~Office~~ Superintendent of Public Instruction shall annually provide written notice of the availability of federal funds under IDEA.

(2) The notice shall include:

(a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA;

(b) amount of the federal funds and the period during which the local educational agency may obligate funds;

(c) goals and objectives for use of the funds;

(d) description of state and federal requirements to which the local educational agency must comply to receive funds;

(e) ~~Office~~ Superintendent of Public Instruction's procedure for approving applications;

(f) requirements for project reports;

(g) a statement of a local educational agency's obligation to make the application and any evaluations, periodic program plans, or reports required by the ~~Office~~ Superintendent of Public Instruction for this project available for public inspection; and

(h) an application form and an offer of technical assistance from the ~~Office~~ Superintendent of Public Instruction.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3181 LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS (1) In order to receive federal funds under IDEA, a local educational agency shall annually submit an application to the Office Superintendent of Public Instruction in accordance with application instructions and within announced timelines.

(a) A local educational agency may submit a single district application if it has:

(i) an entitlement of \$7500 or more; and
(ii) established, satisfactory to the Office Superintendent of Public Instruction, special education and related services which provide a free appropriate public education to students with disabilities.

(b) A local educational agency that participates in an education cooperative under 20-7-451 and 20-7-457, MCA, shall submit one consolidated application through the cooperative.

(c) A local educational agency that generates an entitlement of less than \$7500 or that is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall participate in one consolidated application with other local educational agencies.

(2) A consolidated application must meet the same requirements as a single district application.

(a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds.

(3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The Office Superintendent of Public Instruction shall follow the same review and approval procedures as required for an original application.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3194 OFFICE SUPERINTENDENT OF PUBLIC INSTRUCTION APPROVAL/DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS NOTIFICATION TO LOCAL EDUCATIONAL AGENCY OF INELIGIBILITY TO RECEIVE FUNDS UNDER PART B (1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds.

(2) The Office Superintendent of Public Instruction's approval procedures shall include:

(a) consideration of a local educational agency's response to program monitoring and the early assistance program as defined in ARM 10.16.3660, complaint investigation or due process hearing decisions which are adverse to the local educational agency;

- (b) consideration of any previous Office Superintendent of Public Instruction or Board of Public Education decisions resulting in withholding of funds;
- (c) determination of maintenance of fiscal effort; and
- (d) consideration of an approved program narrative.
- (3) The Office Superintendent of Public Instruction shall provide written notice of approval of the application and federal funds award which shall include:
 - (a) amount of the funds approved;
 - (b) the period during which the local educational agency may obligate funds; and
 - (c) statement of federal requirements which apply to the use of the funds.
- (4) If an LEA is determined to be not eligible for receipt of Part B funds for failure to comply with any of the requirements under Part B and implementing federal and state regulations, the Superintendent ~~The Office~~ of Public Instruction shall provide written notice which meets the requirements of U.S. Education Department general administration regulations (EDGAR) of disapproval of the application and subgrant award will not make a final determination that the local educational agency is not eligible for receipt of funds without first providing reasonable notice and an opportunity for a hearing in accordance with 34 CFR 300.155.
- (5) If a local educational agency or education cooperative makes a significant amendment to its application for federal funds, the local educational agency or education cooperative shall follow the procedures for submitting the original application.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3220 PROGRAM NARRATIVE (1) Each local educational agency or education cooperative must have on file with the Office Superintendent of Public Instruction a written program narrative that describes policies and procedures used for the provision of special education and related services within the local educational agency or education cooperative. The policies, procedures, and ~~programs~~ services in the narrative shall be consistent with state policies and address the requirements of 34 CFR 300.424 ~~101~~ through 300.456 ~~163~~ and 34 CFR 300.165 through 174.

(2) ~~The program narrative shall include a copy of the local educational agency or education cooperative special education forms.~~

(3) If a local educational agency participates in an education cooperative under 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3320 REFERRAL REQUEST FOR INITIAL EVALUATION (1) In accordance with 34 CFR 300.301(b) either a parent or a public agency, as defined in 34 CFR 300.33, may initiate a request for an initial evaluation.

(2) A local educational agency shall establish a referral process procedures for requesting an initial evaluation which includes a methods for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral request for initial evaluation must include a statement of the reasons for referral the request, including documentation of general education interventions for students enrolled in school, and the signature of the person making the referral request.

(b) Referral The request shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree which requires special education and related services.

(c) If an comprehensive educational evaluation in accordance with 34 CFR 300.534 301 through 300.536 311 is warranted, the local educational agency shall obtain consent of the parent before conducting an comprehensive educational evaluation.

(2) ~~If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the local educational agency shall notify the parent in writing of its decision, including a description of any options the local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under 34 CFR 300.500 through 300.529.~~

(3) If the local educational agency does not suspect that the child has a disability and denies the request for an initial evaluation, the local educational agency must provide written notice to the parents, consistent with 34 CFR 300.503(b) of the Individuals with Disabilities Education Act. The parent may challenge such a refusal by requesting a due process hearing.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS AND REEVALUATIONS (1) ~~Before initial provision of special education and related services, a comprehensive and individualized~~ An evaluation of the student's educational needs shall must be conducted in accordance with the requirements of 34 CFR 300.534 301 through 300.543 311 and 34 CFR 300.321.

(2) For initial evaluations, the evaluations, ~~the child study team report shall address:~~

~~(a) The results of assessments in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and~~

~~(b) The data must include the information necessary to address criteria established in ARM 10.16.3010 through 10.16.3022.~~

(3) ~~For all initial evaluations and re-evaluations, the child study team report shall address a review of existing evaluation data on the student, including:~~

~~(a) Evaluations and information provided by the parents of the student;~~

~~(b) Current classroom-based assessments and observations which include the student's involvement and progress in the general curriculum; and~~

~~(c) Observations by teachers and related services providers~~ The evaluation report shall include statements of implications for educational planning in terms understandable to all team members.

~~(4) The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's involvement and progress in the general curriculum and because of that disability needs special education~~ The evaluation report shall include a statement as to why the student needs special education and related services.

~~(5) The child study team shall prepare a written report of the results of the evaluation. The report shall include the results of assessments and shall include statements of implications for educational planning in terms understandable to all team members.~~ All evaluation reports will identify a disability category or categories for each student.

~~(6) All child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services.~~

~~(7) All child study team reports will identify a disability category or categories for each student with a disability consistent with 20-7-401, MCA. This identification of a disability category is for the purposes of data reports required by the Office of Public Instruction.~~

~~(8) Each participant of the child study team shall be provided an opportunity to submit a separate statement of conclusions if the report does not reflect the conclusions of the participant.~~

~~(9) A copy of the report shall be provided to the parent.~~ For an initial evaluation only, the following additional team members are required when a student is being evaluated in the specified category of disability:

(a) emotional disturbance, traumatic brain injury specific learning disability, or cognitive delay requires a school psychologist;

(b) speech-language impairment, deaf/blindness, traumatic brain injury requires a speech-language pathologist;

(c) autism requires a school psychologist and speech-language pathologist;
and

(d) deafness or hearing impairment requires a speech-language pathologist or audiologist.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3340 INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS (1) Local educational agencies shall develop, implement, review, and revise individualized education programs (IEP) in accordance with 34 CFR 300.340 320 through 300.350 ~~328~~.

(2) IEP teams shall make placement decisions in accordance with least restrictive environment provisions at 34 CFR 300.550 114 through 300.554 118.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3341 RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY (1) If a student with disabilities has been placed in a residential treatment facility or children's psychiatric hospital according to 20-7-435, MCA, the residential treatment facility or hospital shall initiate action to develop, review, or revise the student's individualized education program and, if necessary, to evaluate and identify a student with a disability in accordance with the requirements of IDEA.

(2) The facility or hospital shall notify a representative of the student's resident local educational agency of the student's placement at the facility or hospital and request the participation of the resident LEA in meetings as required by IDEA. If the representative of the resident LEA cannot attend the meetings, the representative shall use other methods to ensure participation by the resident LEA.

(3) The facility or hospital shall notify the parents of their right to participate in any decision about the student's individualized education program and agree to any proposed changes in the program before those changes are implemented.

(4) In the event that the residential facility as defined in 20-7-436, MCA, or children's psychiatric hospital is unable or unwilling to provide an appropriate education as required under the IDEA, The student's resident the local educational agency in which the facility is located is responsible for ensuring that a student placed in a residential treatment facility or children's psychiatric hospital receives FAPE under IDEA. The Office Superintendent of Public Instruction is responsible for ensuring compliance with IDEA.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3502 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

(1) When a student with disabilities reaches the age of 18, parental rights under IDEA will transfer to the student in accordance with 34 CFR 300.517 520 and 34 CFR 300.320(c).

~~(a) Beginning at least one year before a student's 18th birthday, the student's IEP must document that the student has been informed of his or her rights under part B of IDEA that will transfer to the student.~~

~~(b) The parent will be provided written notice of the transfer of rights to the student at least one year before the student reaches the age of 18.~~

~~(c) Both the parent and the student will receive all notices required by 34 CFR 300.504.~~

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3504 SURROGATE PARENTS (1) Procedures for the appointment of a surrogate parent shall comply with 20-7-461 through 20-7-463, MCA, 34 CFR 300.30, and 34 CFR 300.519.

(2) A foster parent meeting the requirements of 34 CFR 300.20(b) 30(a)(2) may act as a parent under Part B of IDEA if the natural parents' authority to make

educational decisions on the student's behalf has been extinguished under state law and the foster parent:

(a) ~~has an ongoing, long-term parental relationship with the student;~~
(b) is willing to make the educational decisions required of parents under IDEA; and

(c) ~~(b)~~ has no interest that would conflict with the interests of the student.

(3) The local educational agency shall petition a court of competent jurisdiction for termination of the surrogate parent appointment when the student's parents are identified, the whereabouts of the parents are discovered, the student is no longer a ward of the state, or the surrogate parent wishes to discontinue her or his appointment.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3505 PARENTAL CONSENT (1) The local educational agency shall ~~maintain written documentation of the date the notice of intent to conduct an evaluation was sent to the parent and the date of parental consent for the evaluation.~~ implement parental consent procedures as described in 34 CFR 300.300 and consistent with this rule.

(a) ~~When parental consent for initial evaluation is refused, the local educational agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.3507 through 10.16.3523, to determine if the student may be initially evaluated without parental consent.~~

(b) ~~If the hearing officer upholds the local educational agency, the local educational agency may initially evaluate the student without parental consent subject to the parent's right to bring a civil action.~~

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational or public agency prior to the placement.

(a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.

(b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved.

(c) When parental consent for annual placement has not been obtained and has not been specifically refused, the local educational agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) ~~as developed by the local educational agency~~ 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing under ARM 10.16.3507 through 10.16.3523.

(d) When parental consent for annual placement is refused, the local educational agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:

(i) provide the parent written notice as required by 34 CFR 300.503; and

(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.

~~(3) A parent may revoke consent at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM 10.16.3507 through 10.16.3523.~~

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3506 VOLUNTARY MEDIATION (1) Upon receipt by mail of a written request for mediation signed by all parties to a special education controversy as defined in 34 CFR 300.506, prior to, during, or after a request for a due process hearing under ARM 10.16.3507, the Superintendent of Public Instruction shall appoint an impartial mediator.

(2) The parties may mutually agree to any qualified mediator whose name is included on the list maintained by the Office Superintendent of Public Instruction. If the parties agree to a mediator, the name of the mediator will be included in the request for mediation.

(3) If the request for mediation does not include the name of a qualified mediator, the process for selection is as follows:

(a) The Office Superintendent of Public Instruction shall mail to each party the names of three mediators from its list of qualified mediators knowledgeable in special education laws and regulations.

(b) Upon receipt of the list of names, the parties shall have three business days to review the list, prioritize their selection, and return the list to the Office Superintendent of Public Instruction.

(c) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree, the Superintendent of Public Instruction shall appoint a mediator from the names sent to the parties.

(4) The mediator shall schedule a mediation session in a timely manner, but no later than 30 days from the date of receipt of the request for mediation at the office of the Superintendent of Public Instruction.

(5) Mediation shall comply with 34 CFR 300.506.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS (1) A request for an impartial due process hearing involving the education or possible identification of a student with disabilities shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.

(2) The Superintendent of Public Instruction shall develop a model form to assist parents in filing a request for due process. The request shall include:

- (a) the name of the student;
- (b) the address of the residence of the student;
- (c) the name of the school the student attends;
- (d) in the case of a homeless child or youth, available contact information for the child or youth;

~~(d)~~ (e) a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
~~(e)~~ (f) a proposed resolution of the problem to the extent known and available to the parents at the time.

(3) Upon receipt, the ~~Office~~ Superintendent of Public Instruction shall mail a copy to the other party.

(4) The due process request must be deemed sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receipt of request that the receiving party believes the due process request does not meet the requirements in (2). In this event, the Superintendent of Public Instruction will implement procedures in accordance with 34 CFR 300.508(d).

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3510 NOTICE OF HEARING (1) The impartial hearing officer shall, within ten days of ~~receipt of notice of appointment by the Superintendent of Public Instruction~~ completion of the resolution process, schedule a prehearing conference pursuant to ARM 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

- (a) a statement of the time, place, and nature of the hearing;
 - (b) references to the specific statutes and rules involved available at that time;
 - (c) a provision advising the parties of their right to be represented by counsel at the hearing;
 - (d) a provision informing the parent of any free or low-cost legal and other relevant services available in the area; and
 - (e) a statement of issues and matters to be discussed at the hearing.
- (2) The notice of hearing shall be sent by certified mail to all parties.
- (3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or

impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parties and approved by the impartial hearing officer.

(a) The notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication.

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3515 SCOPE AND LIMITATION OF DISCOVERY (1) Unless otherwise limited by order of the impartial hearing officer, the scope and limitation of discovery ~~is as follows:~~ shall be as set forth in Montana Rules of Civil Procedure, Rule 26 found in Title 25, chapter 20, MCA.

~~(a) in general, parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items, and the identity and location of persons having knowledge of any discoverable material;~~

~~(b) a party may discover facts known or opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation or preparation for hearing.~~

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 45 days of the Superintendent of Public Instruction's receipt of the request for hearing unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the Superintendent of Public Instruction. The hearing officer shall also mail or deliver the record as defined in ARM 10.16.3522 to the Superintendent of Public Instruction.

(2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in which to render a final decision, the impartial hearing officer shall notify the Superintendent of Public Instruction when the

decision is due. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the Superintendent of Public Instruction, the Superintendent of Public Instruction may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the school district's placement is determined to be inappropriate and the parent's placement is deemed appropriate.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 34 CFR 300.512 516.

(6) The Superintendent of Public Instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur.

(7) Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance.

(8) In the event that parents of a student with disabilities prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under 34 CFR 300.513 517.

(9) The ~~Office~~ Superintendent of Public Instruction, after deleting any personally identifiable information, shall transmit those findings and decisions to the state special education advisory panel and make those findings and decisions available to the public.

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3528 INITIATING EXPEDITED DUE PROCESS HEARING (1) An expedited due process hearing under 34 CFR 300.528 532 may be initiated by submitting a written request for a hearing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.

(2) The written request for expedited hearing shall include:

- (a) date of the manifestation determination and evidence of a behavioral assessment plan;
- (b) general statement of the problem;
- (c) name of the school district or public agency, including the name and telephone number of the contact person;
- (d) name of the parent and contact phone number;
- (e) student's name; and
- (f) tentative date(s) that the parties have agreed to hold the expedited hearing.

(3) A facsimile of the request may be submitted, but the original signed

request must be received within three business days. The facsimile number may be requested by calling the Office of Public Instruction.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3531 FINAL DECISION IN EXPEDITED DUE PROCESS HEARING

(1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the expedited hearing as soon as possible and not later than ~~40~~ ten days after the receipt of the request for the expedited hearing by the Superintendent of Public Instruction ~~conclusion of the expedited hearing~~. An extension may be requested; however, the extension cannot be for more than a total of ~~35~~ exceed an additional five days.

(2) If the parent requests an audio record of the hearing and/or a copy of the findings of facts and decision at the prehearing conference, the due process hearing officer shall provide such a copy to the Superintendent of Public Instruction and the parties.

(3) The hearing officer shall mail or deliver the record as defined in ARM 10.16.3522 to the Superintendent of Public Instruction.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may begin a civil action under 34 CFR 300.512 516.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3560 SPECIAL EDUCATION RECORDS

(1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR 500.560 610 through 500.577 626.

(2) ~~Each~~ The special education record shall include access log, referral, request for initial evaluation, permission for evaluation, ~~evaluation data including~~ summaries of assessments, test protocols, and other information that are not subject to sole possession requirements of FERPA, ~~child study team~~ evaluation reports, individualized education programs, and ~~periodic reviews~~ reports of the student's progress toward meeting annual goals of the individualized education program.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3571 PARENTAL CONSENT FOR RECORDS

(1) Parental consent for disclosure of records shall comply with 34 CFR 300.571 622.

(2) In the event that parents refuse to consent to disclosure of records, the

local educational agency may request an impartial due process hearing in accordance with ARM 10.16.3507 through 10.16.3523 to resolve the controversy.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3660 EARLY ASSISTANCE PROGRAM (1) The Office

Superintendent of Public Instruction shall provide an ongoing and systematic informal dispute resolution process referred to as the "Early Assistance Program."

(2) A parent, guardian, adult student, school district, or their representative may request early assistance in any issue related to a student's free appropriate public education. The Early Assistance Program does not require formal, written application; however, request for early assistance may be made in writing to the Office Superintendent of Public Instruction, Legal Services Division, P.O. Box 202501, Helena, MT 59620-2501. There is no pre-established procedure that must be followed.

(3) The Early Assistance Program focuses on substance -- the quick resolution of problems of mutual concern to all parties. It is not based on the model of an impartial third party resolving a legal dispute between parties with conflicting goals or interests. It is, however, based on the goal of ensuring the delivery of a free appropriate public education. The Early Assistance Program draws on the traditional model of parents and schools working cooperatively to achieve their shared goal of meeting the educational needs of the student with disabilities.

(4) As stated in ARM 10.16.3662, ~~prior to or~~ immediately following the filing of a formal administrative complaint as that term is defined referenced in 34 CFR 300.662 151 through 300.153 (as distinguished from a request for due process), a parent or guardian must and the local educational or public agency may agree in writing to allow the Office Superintendent of Public Instruction, through the Early Assistance Program, 15 business days from the day it receives the written ~~notification of the intent to file a complaint to contact the school district and the parent or guardian to attempt to resolve the problem through the Early Assistance Program.~~ Pursuant to 34 CFR 300.152(b)(1)(ii), and upon written agreement of the parties, these 15 business days shall not be counted as part of the 60 day complaint resolution timeline.

(5) ~~After the expiration of 15 business days, the parent or guardian may file a formal complaint at any time using a form provided by the Office of Public Instruction. If a complaint has already been filed, there is no need for a new complaint on an Office of Public Instruction form. All procedural rights apply. If the parent or guardian chooses not to file a formal complaint, the Office of Public Instruction, the school district and the parent or guardian will continue to attempt to resolve the problem through the early assistance program.~~

(6) The services offered under this program are available in all circumstances where there is a possibility for mutual resolution. If the ~~Office of Public Instruction~~ Early Assistance Program manager decides that any attempt to mutually resolve the complaint would be futile, the compliance officer shall proceed ~~as if 15 business days had expired without resolution of the dispute~~ according to the procedures and timelines set forth in 34 CRF 300.151 through 300.153 and ARM 10.16.3662.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3661 OPPORTUNITY TO PRESENT COMPLAINTS (1) The Superintendent of Public Instruction has established state complaint procedures to comply with 34 CFR 300.660 151 through 300.662 153. Individuals or organizations alleging that a Montana local educational or public agency has failed to provide a student with disabilities a free appropriate public education may use ARM 10.16.3662 to file a complaint.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint that the local educational or public agency is violating the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

(2) The complaint must:

(a) allege a violation that occurred not more than one year prior to the date that the complaint is received ~~in accordance with 34 CFR 300.662 unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under 34 CFR 300.660;~~

(b) contain a specific statement of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education the local educational or public agency has allegedly violated; and

(c) include a statement of facts on which the allegation is based.

(3) ~~The complainant must be filed the complaint~~ with the Compliance Officer, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and forward a copy to the local educational or public agency serving the child. The compliance officer may return the complaint for a more complete statement of the issue. The compliance officer may contact the complainant orally or in writing to discuss the details of the complaint.

(4) Within ~~40~~ ten calendar days of receipt of the final written complaint, the compliance officer shall send written notification to the complainant and the local educational or public agency that a complaint has been filed.

(a) The compliance officer shall include a copy of the complaint with the notice to the local educational or public agency.

(b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the compliance officer shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3507 through 10.16.3523.

(c) The written notice shall inform the local educational or public agency and the complainant that the ~~Office of Public Instruction~~ compliance officer will contact both parties to ~~implement its~~ notify them of the availability of the Early Assistance Program ~~pursuant to as set forth in ARM 10.16.3660. The early assistance program requires that prior to conducting an investigation of the allegations and preparation of a final report, the Office of Public Instruction shall actively facilitate resolution of the written complaint for a maximum of 15 business days.~~

(5) If the local educational or public agency and the complainant are successful in resolving the dispute within 15 business days, the complaint will be dismissed. ~~If resolution within 15 business days is not possible, the dispute is not resolved through the Early Assistance Program process,~~ the compliance officer shall immediately request the local educational or public agency to prepare and submit its written response to the complaint within ~~40~~ ten calendar days of receiving the notice that the Early Assistance Program has been unsuccessful. An extension may be granted to the local educational or public agency by the compliance officer based on ~~merits~~ reasonable necessity. ~~An extension shall not be granted that will result in findings issued past the 60 day timeline.~~ The local educational or public agency shall send its response to the compliance officer and a copy to the complainant.

(6) Upon receipt of the local educational or public agency's response, the compliance officer shall begin an appropriate investigation.

(7) The complainant will have ~~40~~ ten calendar days to submit to the compliance officer additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's written response to the complaint. ~~The 10 days will be counted from the day after the complainant receives a copy of the local educational or public agency's response.~~

(8) During the investigation neither the complainant nor the local educational or public agency or others representing either party shall contact the compliance officer without notifying the other party. Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation, or rule concerning the provision of a free appropriate public education to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint or the timeline was modified during the Early Assistance Program process.

(9) The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. The written decision will contain the reasons for the ~~Office of Public Instruction's~~ compliance officer's decision. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The ~~Office Superintendent~~ of Public Instruction will provide technical assistance at the request of the local educational or public agency. The complaint, investigative records, and the final report shall be filed in a confidential file retained by the compliance officer.

(10) At any time during this process, if the compliance officer determines that

the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing.

(11) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the Office Superintendent of Public Instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

- (a) recommending to the Board of Public Education withholding state education funds;
- (b) denial in whole or part IDEA, Part B federal funds; or
- (c) recommending to the Board of Public Education a change in accreditation status.

(12) If the local educational or public agency alleges that the ~~Office of Public Instruction~~ compliance officer has violated a state or federal special education statute, regulation, or rule in ordering the corrective action required by the final report, the Office Superintendent of Public Instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA, prior to implementing sanctions.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3803 DEFINITIONS The following definitions apply to rules affecting the funding of special education programs:

(1) "Advance reimbursement on special education allowable cost payments" means a loan to a district to offset a severe economic hardship caused by exceptional special education costs to the district. This advance on a district's ensuing fiscal year's special education allowable cost payment must be repaid in the ensuing fiscal year.

(2) "Appropriation" means an annual amount set by the Office Superintendent of Public Instruction for distribution to schools and cooperatives such that:

- (a) the amount does not exceed legislative appropriation;
- (b) the sum of amounts that are set for each of the fiscal years of a biennial appropriation total the biennial appropriation; and
- (c) the amount distributed to schools may be less than the appropriated amount to compensate for additional ANB count.

(3) "Average number belonging" or "ANB" means a student count for each school district that is used for school funding purposes. The count is performed according to ARM 10.20.102, et seq.

(4) "Certified local match" means the local matching funds that a district is required to contribute toward special education costs to avoid any reversions against its special education allowable cost payments. This number is certified by the Superintendent of Public Instruction.

~~(5) "Child count" means the number of students with disabilities receiving special education and related services per a current individualized education~~

program on December 1 of each fiscal year. This number is reported in accordance with ARM 10.16.3752.

~~(6)~~ (5) "Cooperative" and "special education cooperative" means a full service education cooperative or joint board established under 20-7-451, MCA, to provide special education services.

~~(7)~~ (6) "Cooperative administrative costs" means the costs cooperatives incur for operations, maintenance, travel, support services, recruitment, and administration.

~~(8)~~ (7) "Current fiscal year" means the period between July 1 and June 30 during which calculations for the ensuing fiscal year are made.

~~(9)~~ (8) "Eligible district" means a district that has a special education program as defined in ARM 10.16.3810.

~~(10)~~ (9) "Ensuing fiscal year" means the fiscal year for which a calculation is being made.

~~(11)~~ (10) "Instructional block grant" means the portion of the special education allowable cost payment based on statewide special education instructional expenditures and calculated as a per student rate times the number of students per district.

~~(12)~~ (11) "Minimum special education expenditure to avoid reversions" means a district's instructional block grant plus a district's related services block grant plus the district's certified required local match. If the district is a participating member of a cooperative, the related services block grant is not included in the minimum special education expenditure to avoid reversions.

~~(13)~~ (12) "Reimbursement" and "reimbursement for disproportionate costs" mean the portion of the special education allowable cost payment that is calculated based on district's prior special education expenditures to offset disproportionately high special education expenditures.

~~(14)~~ (13) "Related services block grant" means the portion of the special education allowable cost payment based on statewide special education related services expenditures and calculated as a per student rate times the number of students per district. If a district is a special education cooperative member, this portion of the special education allowable cost payment is awarded to the cooperative.

~~(15)~~ (14) "Special education allowable cost payment" and "allowable cost payment" means the amount of the state special education appropriation distributed to districts or special education cooperatives for special education programs.

~~(16)~~ (15) "Special education allowable cost expenditures" means expenditures for certain allowable costs associated with the provision of special education services to a child with disabilities as defined in 20-7-401, MCA.

AUTH: 20-7-402, 20-7-431, 20-7-457, MCA

IMP: 20-7-414, 20-7-431, 20-7-457, 20-9-321, MCA

10.16.3810 ELIGIBILITY TO RECEIVE PAYMENT (1) A district is eligible to receive a special education allowable cost payment for the ensuing fiscal year if it has a special education program. A school district has a special education program if it:

- (a) has a resident student reported on the current fiscal year ~~December 4~~ special education child count;
 - (b) is participating in a cooperative; or
 - (c) has a written agreement with another public school district or cooperative to provide a special education program in the event a student in need of special education enrolls in the district.
- (2) Any residential treatment facility or children's psychiatric hospital that provides education services under contract with the ~~Office~~ Superintendent of Public Instruction is not eligible to receive special education allowable cost payments.
- (3) Non-operating districts are eligible for reimbursement of disproportionate costs.
- (4) A cooperative meeting the requirements of 20-7-457, MCA, is eligible to receive the related services block grants for member districts and an additional amount for administrative and travel costs.

AUTH: 20-9-321, MCA
IMP: 20-7-414, 20-9-321, MCA

6. ARM 10.16.3129 PARENTAL INVOLVEMENT, which can be found on page 10-230 of the Administrative Rules of Montana, is proposed to be repealed because these provisions are in the federal requirements and referred to in ARM 10.16.3505.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

ARM 10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN and ARM 10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN, which can be found on pages 10-234 - 235 of the Administrative Rules of Montana, are proposed to be repealed because the Individuals with Disabilities Education Act as reauthorized in 2004 does not contain these requirements.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

ARM 10.16.3196 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING, which can be found on pages 10-237 - 238 of the Administrative Rules of Montana, is proposed to be repealed because the hearing provisions are contained in ARM 10.16.3194.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

ARM 10.16.3322 COMPOSITION OF A CHILD STUDY TEAM, which can be found on pages 10-246 - 247 of the Administrative Rules of Montana, is proposed to be repealed because "child study team" is no longer being used. These procedures

are now under ARM 10.16.3321.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

ARM 10.16.3342 TRANSFER STUDENTS: INTRASTATE AND INTERSTATE, which can be found on page 10-248 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of the federal regulations have been adopted and therefore this rule is no longer needed.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

ARM 10.16.3516 LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER, which can be found on page 10-256 of the Administrative Rules of Montana, is proposed to be repealed because this topic has been included in ARM 10.16.3515 and therefore this rule is redundant.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

ARM 10.16.3751 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT and 10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT, which can be found on pages 10-275 and 10-276 of the Administrative Rules of Montana, are proposed to be repealed because these provisions are included under NEW RULE III and therefore these rules are no longer needed.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

7. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@mt.gov and must be received no later than the close of the hearing on April 16, 2007.

8. Catherine K. Warhank, OPI Chief Legal Counsel, has been designated to preside over and conduct the hearing.

9. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box

202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch
Linda McCulloch,
Superintendent of Public Instruction

/s/ Catherine K. Warhank
Catherine K. Warhank,
Rule Reviewer

Certified to the Secretary of State February 12, 2007.